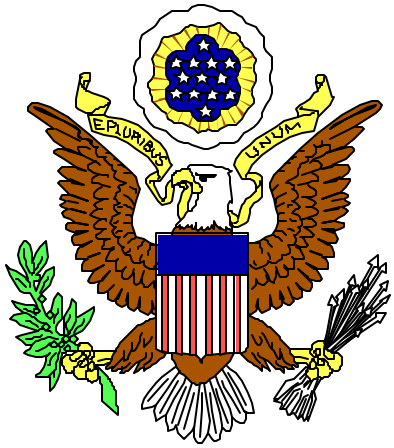
UNITED STATES DISTRICT COURT

FOR THE

WESTERN DISTRICT OF NEW YORK



LOCAL RULES OF CIVIL PROCEDURE

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF NEW YORK

IN RE ADOPTION OF LOCAL RULES OF CIVIL PROCEDURE

FOR THE

WESTERN DISTRICT OF NEW YORK

These rules were prepared by the Judges of the United States District Court for the Western District of New York, in collaboration with the federal bar.

It is so ordered that the rules set forth herein are adopted as the Rules of Civil Procedure of the United States District Court for the Western District of New York together with all of the amendments to date to take effect on December 1, 1994 and to supersede all general rules previously adopted.

MICHAEL A. TELESCA
Chief United States District Judge

DAVID G. LARIMER
United States District Judge

RICHARD J. ARCARA
United States District Judge

WILLIAM M. SKRETNY
United States District Judge

JOHN T. CURTIN
Senior United States District Judge

JOHN T. ELFVIN
Senior United States District Judge

UNITED STATES DISTRICT COURT

WESTERN DISTRICT OF NEW YORK

UNITED STATES DISTRICT COURT JUDGES

David G. Larimer, Chief Judge . . . . . U.S. Courthouse, Rochester, NY
Richard J. Arcara . . . . . U.S. Courthouse, Buffalo, NY
William M. Skretny . . . . . U.S. Courthouse, Buffalo, NY
Charles J. Siragusa . . . . . U.S. Courthouse, Rochester, NY
John T. Curtin, Senior Judge . . . . . U.S. Courthouse, Buffalo, NY
John T. Elfvin, Senior Judge . . . . . U.S. Courthouse, Buffalo, NY
Michael A. Telesca, Senior Judge . . . . . U.S. Courthouse, Rochester, NY

UNITED STATES BANKRUPTCY JUDGES

John C. Ninfo II, Chief Judge . . . . . U.S. Courthouse, Rochester, NY
Michael J. Kaplan . . . . . U.S. Courthouse, Buffalo, NY
Carl L. Bucki . . . . . U.S. Courthouse, Buffalo, NY

UNITED STATES MAGISTRATE JUDGES

Leslie G. Foschio . . . . . Buffalo, NY
Hugh B. Scott . . . . . Buffalo, NY
Jonathan W. Feldman . . . . . Rochester, NY
William G. Bauer . . . . . Rochester, NY
H. Kenneth Schroeder, Jr . . . . . Buffalo, NY
Edmund F. Maxwell . . . . . Buffalo, NY

CLERK OF UNITED STATES DISTRICT COURT

Rodney C. Early . . . . . Buffalo, NY

DEPUTY-IN-CHARGE

Rachel B. Bandych . . . . . Rochester, NY

CLERK OF UNITED STATES BANKRUPTCY COURT

Paul R. Warren . . . . . Buffalo, NY

DEPUTY-IN-CHARGE

Todd M. Stickle . . . . . Rochester, NY

UNITED STATES ATTORNEY

Denise E. O'Donnell . . . . . Buffalo, NY

ASSISTANT UNITED STATES ATTORNEY-IN-CHARGE

Bradley E. Tyler . . . . . Rochester, NY

CHIEF PROBATION OFFICER

Joseph A. Giacobbe . . . . . Buffalo, NY

DEPUTY CHIEF PROBATION OFFICER

Thomas J. McGlynn . . . . . Rochester, NY

UNITED STATES MARSHAL

John P. McCaffrey . . . . . Rochester, NY

CHIEF DEPUTY UNITED STATES MARSHAL

James Alduino . . . . . Buffalo, NY

TERRITORIAL JURISDICTION

Counties of:

Allegany	Genesee	Orleans	Wyoming
Cattaraugus	Livingston	Schuyler	Yates
Chautauqua	Monroe	Seneca	
Chemung	Niagara	Steuben	
Erie	Ontario	Wayne	

With the waters thereof.

Plans adopted by the United States District Court for the Western District of New York

Copies of the following plans that have been adopted by the Court are available on request in the Clerk's offices in Rochester and Buffalo[1]:

- # Civil Justice Expense and Delay Reduction Plan
- # Court Reporter Management Plan
- # Criminal Justice Act Plan
- # Jury Plan
- # Plan for the Administration of the District Court Fund
- # Revised Plan for the Prompt Disposition of Criminal Cases
- # Standing Order Governing Claims under the Racketeer Influenced & Corrupt Organizations Act

[1]The listed plans are for reference only and may be modified or abrogated by the Court in its discretion.

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF NEW YORK

LOCAL RULES OF CIVIL PROCEDURE

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RULE 1.1

TITLE

These rules shall be known as the Local Rules of Civil Procedure for the United States District Court for the Western District of New York. These rules supplement the Federal Rules of Civil Procedure.

RULE 1.2

THE "COURT"

Wherever in these rules reference is made to the "Court", "Judge", or similar term, such term shall be deemed to include a Magistrate Judge unless the context requires otherwise.

RULE 5.1

FILING CASES

(a) Every civil action shall be filed with the Clerk. It shall then be assigned by the Clerk to a Judge of the District and a Magistrate Judge.

(b) For purposes of case assignment, the Western District of New York is divided into two areas. Cases arising in the eight western counties: Allegany, Cattaraugus, Chautauqua, Erie, Genesee, Niagara, Orleans and Wyoming (the "Buffalo area"), shall ordinarily be assigned to a Judge in Buffalo. Cases arising in the nine eastern counties: Chemung, Livingston, Monroe, Ontario, Schuyler, Seneca, Steuben, Wayne and Yates (the "Rochester area"), shall ordinarily be assigned to a Judge in Rochester. The assignment within these areas shall ordinarily be by random selection.

(c) Upon the filing of a complaint or other pleading stating a claim under the Racketeer Influenced & Corrupt Organizations Act ("RICO"), 18 U.S.C. § 1961 et seq., the Clerk of the Court shall provide to the filing party a copy of the Standing Order of this Court, dated January 22, 1991, pursuant to which such party shall file a "RICO Case Statement" as more particularly provided in the Standing Order.

RULE 5.2

FORM OF PAPERS

(a) All pleadings and other papers shall be plainly and legibly written, typewritten, printed or reproduced, without erasures or interlineations materially defacing them, in ink on durable white 8½" x 11" paper of good quality and fastened in durable covers. All documents presented for filing shall be pre-punched with two normal-size holes (approximately ¼" diameter), centered 2¾" apart, ½" to **e** " from the top edge of the document.

(b) All papers shall be endorsed with the name of the Court, the title of the case, the proper docket number and the name or nature of the paper, in sufficient detail for identification. All papers shall be signed by an attorney or by the litigant if appearing pro se, and the name, address and telephone number of each attorney or litigant so appearing shall be typed or printed thereon. All papers shall be dated.

(c) Papers containing responses to written questions or demands, including answers to interrogatories, depositions upon written questions, letters of request or a notice demanding admissions, shall set forth each question or demand verbatim with the party's response set forth immediately thereafter.

RULE 5.3

PRO SE ACTIONS

(a) In any action based upon social security claims, employment discrimination or prisoner civil rights, in which a plaintiff files pro se, that is, for himself or herself without assistance of an attorney, the complaint should be filed on the forms provided in the Clerk's office. Leave to amend the complaint at a later date shall be freely granted in accordance with
Federal Rule of Civil Procedure 15.

(b) Habeas corpus petitions under 28 U.S.C. §§ 2254 and 2255 shall be filed on forms available in the Clerk's office upon the petitioner's request. Section 2255 cases are to be filed without charge. A petition not filed on the appropriate form may be returned to the petitioner for refiling on the proper form if a Judge of the Court so directs.

(c) An indigent pro se plaintiff or petitioner (28 U.S.C. § 2254) may seek in forma pauperis status to file his or her action or proceeding without payment of fees by filing the form affidavit available in the Clerk's office, along with the complaint/petition. The case will be given a civil docket number and the in forma pauperis application will be submitted to a Judge of the Court. If the Judge denies in forma pauperis status, the plaintiff/petitioner will by written order be given notice that the case will be dismissed if the fee is not paid within twenty (20) days.

(d) A party appearing pro se shall file with the complaint or other pleading a statement of an address within the Western District of New York where papers may be served. This requirement shall not apply to habeas corpus petitions under 28 U.S.C. §§ 2254 and 2255 or to prisoner civil rights cases under 42 U.S.C. § 1983, if the plaintiff resides or is in custody outside the District. It is the responsibility of a pro se litigant to inform the Court of any change of address. Failure to do so may result in dismissal of the case with prejudice.

RULE 5.4

HABEAS CORPUS

Petitions under 28 U.S.C. §§ 2254 and 2255 shall be filed pursuant to the Rules Governing Section 2254 Cases in the United States District Courts and the Rules Governing Section 2255 Proceedings for the United States District Courts. These rules are published at 28 U.S.C.A. following §§ 2254 and 2255, respectively.

RULE 5.5

SEALING OF CIVIL COMPLAINTS

Unless provided for by statute, the filing of a civil complaint shall not be concealed by the Clerk from the public except on order of either the judicial officer assigned thereto or of another judicial officer acting in the assigned officer's absence, upon good cause shown. When the sealing of a civil complaint is appropriate under either statute or this rule, the Clerk shall inscribe in the public records of the Court only the case number, the fact that a complaint was filed under seal, the name of the Judge or Magistrate Judge who ordered the seal, and (after assignment of the case to a Judge and a Magistrate Judge in the normal fashion) the names of the assigned Judge and the assigned Magistrate Judge.

RULE 5.6

PAYMENT OF FEES IN ADVANCE

(a) The Clerk shall not be required to render any service for which a fee is prescribed by statute or by the Judicial Conference of the United States unless the fee for the particular service is paid to him or her in advance. A schedule of fees is available in the office of the Clerk.

(b) Pursuant to 28 U.S.C. § 1915, the Court may authorize the commencement, prosecution or defense of any action or appeal therefrom without prepayment of fees, costs or security therefor by a person who is unable to pay such fees, costs or security in accordance with Local Rule of Civil Procedure 5.3(c).

RULE 7.1

SERVICE AND FILING OF PAPERS

(a) All pleadings, notices and other papers shall be served and filed in accordance with the Federal Rules of Civil Procedure.

(1) Pursuant to Federal Rule of Civil Procedure 5(d), depositions, interrogatories, requests for documents, requests for admissions, and answers and responses thereto shall not be filed with the Clerk's office, except in pro se cases or upon order of the Court for use in a specific motion or proceeding.

(2) A party seeking or opposing any relief under the Federal Rules of Civil Procedure shall file only such portion(s) of a deposition, interrogatory, request for documents, request for admission, or other material that is pertinent to the application.

(3) A party seeking to include in a record on appeal material which was not previously filed shall apply to the Court for an order requiring the Clerk to file such material. The party may make such application by motion or by stipulation of counsel.

(b) All orders, whether issued on notice or ex parte, together with the papers on which they were granted, shall be filed forthwith.

(c) A moving party who wishes to file reply papers shall file and serve the notice of motion and supporting papers at least fifteen business days prior to the return date of the motion. The notice of motion shall also state that the moving party intends to file and serve reply papers and that the opposing party is therefore required to file and serve opposing papers at least eight business days prior to the return date. Reply papers shall be filed and served at least three business days before the return date. Under all other circumstances, and except as ordered otherwise by the Court, notices of motion together with supporting affidavits and memoranda shall be served on the parties and filed with the Clerk at least ten business days prior to the return date of the motion. Answering affidavits and memoranda shall be served and filed at least three business days prior to the return date. Sur-reply papers shall not be permitted unless a party is directed otherwise by the Court.

(d) A party wishing to shorten the notice requirement prescribed in subparagraph (c) shall make written application to the Court for an expedited hearing on the motion pursuant to Rule 6(d) of the Federal Rules of Civil Procedure. Such application shall contain a clear and specific showing by affidavit of good and sufficient reasons why procedure other than by notice of motion is necessary.

(e) Absent leave of court or as otherwise specified in this rule, upon any motion filed pursuant to Federal Rules of Civil Procedure 12, 56 or 65(a), the moving party shall file and serve with the motion papers a memorandum of law and an affidavit in support of the motion and the opposing party shall file and serve with the papers in opposition to the motion an answering memorandum and a supporting affidavit. Failure to comply with this subdivision may constitute grounds for resolving the motion against the non-complying party.

(f) Without prior approval of the Court, briefs or memoranda in support of or in opposition to any motion shall not exceed twenty-five pages in length and reply briefs shall not exceed ten pages in length.

Applications to exceed these page limits shall be made in writing by letter to the Court with copies to all counsel.

(g) Good cause shall be shown for the making of any application ex parte. The papers in support of such application shall state attempts made to resolve the dispute through a motion on notice and/or state why notice of the application for relief may not be given.

(h) No filed document shall be removed from the Court except on order of the Court.

(i) Unless otherwise specified by statute or rules or requested by the Court, only the original of any papers shall be accepted for filing. Parties are directed not to submit courtesy copies of papers, except upon request of the Court.

(j) Service of all papers other than a subpoena or a summons and complaint shall be permitted by dispatching the paper to the attorney by overnight delivery service at the address designated by the attorney for that purpose, or if none is designated, at the attorney's last known address. Service by overnight delivery service shall be complete upon deposit of the paper enclosed in a properly addressed wrapper into the custody of the overnight delivery service for overnight delivery, prior to the latest time designated by the overnight delivery service for overnight delivery. Where a period of time prescribed by either the Federal Rules of Civil Procedure or these rules is measured from the service of a paper and service is by overnight delivery, one business day shall be added to the prescribed period. "Overnight delivery service" means any delivery service which regularly accepts items for overnight delivery to any address within the jurisdiction of the Court.

(k) No papers shall be served by electronic means (e.g. FAX phone) unless the parties stipulate in advance in accordance with Local Rule of Civil Procedure 29 to accept service by this means. Without such prior stipulation, such attempted service shall be considered void. No papers shall be filed with the Clerk by electronic means.

RULE 7.2

MOTION TO SETTLE AN ORDER

When counsel are unable to agree as to the form of a proposed order, the prevailing party may move, upon three days notice to all parties, to settle the order. Costs and attorneys' fees may be awarded against an attorney whose unreasonable conduct is deemed to have required the bringing of such a motion.

RULE 7.3

ORAL ARGUMENT

In its discretion, the Court may require written briefs before hearing argument on motions made other than pursuant to Federal Rules of Civil Procedure 12, 56 and 65(a) [See Local Rule of Civil Procedure 7.1(e)], and may notify the parties that oral argument shall not be heard on any given motion.

RULE 11

SANCTIONS

(a) **Dismissal or Default**. Failure of counsel for any party to appear before the Court at a conference, or to complete the necessary preparations, or to be prepared to proceed to trial at the time set may be considered an abandonment of the case or a failure to prosecute or defend diligently and an appropriate order for sanctions may be entered against the defaulting party with respect to either a specific issue or the entire case.

(b) **Imposition of Costs on Attorneys**. Upon finding that sanctions pursuant to section (a) would be either inadequate or unjust as to the parties, the Judge may, in accordance with 28 U.S.C. § 1927, assess reasonable costs directly against counsel whose action has obstructed the effective administration of the Court's business.

(c) **Assessment of Jury Costs**. In any civil case in which a settlement is reached or in which the Court is notified of settlement later than the close of business on the last business day before jurors are to appear for jury selection, the Court, in its discretion, may impose the costs to the Government of compensating the jurors for their needless appearance against one or more of the parties, or against one or more counsel, as to the Court appears proper. Funds so collected shall be deposited by the Clerk into the Treasury of the United States.

RULE 16.1

PRE-TRIAL PROCEDURES IN CIVIL CASES

(a) Within sixty days of issue being joined, the Magistrate Judge shall hold a Rule 16 pre-trial discovery conference ("first discovery conference") in all cases except pro se prisoner civil rights, social security and habeas corpus cases, and shall issue an order providing for a discovery cut-off date, a date for a settlement conference ("first settlement conference") to be held before the Magistrate Judge, and a proposed trial date. The order shall also include a time limitation on the joinder of other parties, the commencement of third-party practice, and the filing of all pre-trial motions. No further or additional discovery, joinder, third-party practice, or non-dispositive motions shall be permitted thereafter except by leave of the Court for good cause shown in writing.

At the first discovery conference, counsel for each party shall present a plan and schedule for discovery and the proposed management of the case. This plan and schedule may be presented orally or in writing, depending on the preference and in the discretion of the Magistrate Judge.

Unless there is good cause shown in writing, the discovery cut-off date shall not be more than six months from the date of the order setting that date, the initial settlement conference shall be within ninety days after the date of the order, and the proposed trial date shall be no later than twelve months after the discovery cut-off date. A firm trial date will be set by the trial court.

Additional discovery conferences may be scheduled in the discretion of the Magistrate Judge, sua sponte, or at the request of a party.

In an appropriate, uncomplicated action, upon issue being joined, any party may request, or the Court on its own motion may provide for, an advanced trial date and limited discovery. In such a case, a scheduling order shall issue providing for abbreviated discovery and a proposed early trial date.

(b) All non-dispositive pre-trial motions as authorized by 28 U.S.C. § 636(b)(1) shall be made returnable before the Magistrate Judge, and all motion papers shall be filed with the Clerk.

(c) At the first settlement conference, the attorneys shall be present and shall be prepared to state their respective positions to the Magistrate Judge. Each plaintiff shall communicate a demand for settlement to the Magistrate Judge, and each defendant shall be prepared to communicate a response. The attorneys shall have spoken with their respective clients regarding their settlement positions prior to the settlement conference. Likewise, in cases involving insurance coverage, defense counsel shall have spoken with the insurance carrier regarding its position prior to this settlement conference. Each party shall submit in writing, or be prepared to discuss, the undisputed facts and legal issues relevant to the case, and the legal and factual issues about which the party believes there is a dispute.

If a settlement is not reached at the first settlement conference, the Magistrate Judge may schedule additional settlement conferences from time to time as appropriate.

Upon notice by the Court, representatives of the parties with authority to bind them in settlement discussions, or the parties themselves, must be present or available by telephone during any settlement conference.

Each settlement conference is designed to provide a neutral, non-binding evaluation program for the presentation of the legal and factual issues in a case, and the opportunity to present these issues to a judicial officer as early in the process as possible.

(d) At any subsequent discovery conference held in the discretion of the Magistrate Judge, the attorneys shall provide a status update and a time-table for the remaining discovery to be completed within the discovery period.

(e) No extensions of the discovery period shall be granted, except for good cause shown in writing by order of the Magistrate Judge.

(f) After completion of discovery and motions as set forth in the scheduling order, any case in which the parties have not consented to disposition by the Magistrate Judge under 28 U.S.C. § 636 shall be referred to the District Judge assigned to the case, who shall then be responsible for the further efficient scheduling and disposition of that case; any other case shall remain with the Magistrate Judge, who will retain responsibility for the efficient scheduling and disposition of that case.

(g) Within thirty days after the close of discovery, the District Judge, or if the parties have consented to disposition by the Magistrate Judge, the Magistrate Judge, shall hold a pre-trial conference for the purpose of setting a cut-off date for remaining motions, setting a firm trial date, and discussing settlement. Except for good cause shown in writing, such motion cut-off date shall not be more than ninety days after the date of the discovery cut-off and not less than 120 days prior to the trial date. Nothing contained in this rule shall be read as precluding or discouraging dispositive motions at any time during the pendency of a case.

(h) Each District Judge or Magistrate Judge conducting a pre-trial conference, shall make an earnest effort to encourage and become involved in settlement negotiations between the parties. If the case is not resolved at such conference, the District Judge or the Magistrate Judge shall schedule further pre-trial conferences for the purpose of discussing settlement, as appropriate.

(i) If the case is not thereafter resolved, counsel for each party, no later than thirty days before the trial date, and in no event later than the final pre-trial conference, shall file with the Court and serve upon counsel for all other parties, a pre-trial statement which shall include the following:

> (1) A detailed statement of contested and uncontested facts, and of the party's position regarding contested facts;
>
> (2) A detailed statement as to the issues of law involved and any unusual questions relative to the admissibility of evidence together with supporting authority;
>
> (3) A list of witnesses (other than rebuttal witnesses) expected to testify, together with a brief statement of their anticipated testimony and their addresses;
>
> (4) A brief summary of the qualifications of all expert witnesses, and a concise statement of each expert's expected opinion testimony and the material upon which that testimony is expected to be based;

(5) A list of exhibits anticipated to be used at trial, except exhibits which may be used solely for impeachment or rebuttal;

(6) A list of any deposition testimony to be offered in evidence;

(7) An itemized statement of each element of special damages and other relief sought; and

(8) Such additional submissions as the District Judge or Magistrate Judge directs.

(j) A final pretrial conference shall be held at the direction of the District Judge or the Magistrate Judge within thirty days of the trial date. Trial counsel shall be present at this conference and shall be prepared to discuss all aspects of the case and any matters which may narrow the issues and aid in its prompt disposition, including:

(1) The possibility of settlement;

(2) Motions in limine;

(3) The resolution of any legal or factual issues raised in the pre-trial statement of any party;

(4) Stipulations (which shall be in writing); and

(5) Any other matters that counsel or the Court deems appropriate.

(k) Prior to the final pre-trial conference, counsel shall meet to mark and list each exhibit contained in the pre-trial statements. At the conference, counsel shall produce a copy of each exhibit for examination by opposing counsel and for notice of any objection to its admission in evidence. Following the final pre-trial conference, a pre-trial order may be entered as directed by the District Judge or the Magistrate Judge, and the case certified as ready for trial.

(l) Each party shall be represented at each pre-trial, discovery or settlement conference by an attorney who has the authority to bind that party regarding all matters previously identified by the Court for discussion at the conference and all reasonably related matters.

(m) For purposes of procedural information, copies of standard referral orders used by each Judge in this District are available in the Clerk's office.

(n) A District Judge may also refer to the United States Magistrate Judge any other pre-trial matter as authorized by 28 U.S.C. § 636(b)(1)(A) and (B).

(o) If the Court so directs, a request for an extension of the deadline for the completion of discovery or for the postponement of the trial date shall be signed by both the attorney and the party making the request.

RULE 16.2

ARBITRATION

(a) **Purpose and Scope**. This rule governs the consensual arbitration of civil actions as provided by 28 U.S.C. § 651 et seq. Its purpose is to promote the speedy, fair and economical resolution of controversies by informal procedures.

Under this rule, the parties in a civil action may consent to a hearing before an impartial arbitrator or panel of arbitrators who will make a decision as to the issues presented and render an award based upon that decision. Unless the parties otherwise agree, arbitration in this Court is non-binding and parties shall have an opportunity to request a trial de novo.

(b) **Actions Subject to this Rule**. This rule shall apply to all civil actions which are filed after the effective date of this rule and by court order to any pending action.

(c) **Notification of Right to Proceed to Arbitration**. After issue is joined, the Clerk shall notify the parties in all civil actions that they may consent to arbitration under this rule.

(d) **Procedure for Consenting to Arbitration**. Parties may consent to arbitration at any time before trial. Such consent must be given freely and knowingly and no party or attorney shall be prejudiced for refusing to participate in arbitration. If no consent is achieved, no Judge or Magistrate Judge to whom the action is or may be assigned shall be advised of the identity of any party or attorney who opposed the use of arbitration.

(1) **Form of Consent**. The form of consent shall be prescribed by the Clerk and shall offer the parties the option of waiving the right to demand trial de novo, thus making the results of the arbitration proceeding binding upon them. The plaintiff shall be responsible for securing the execution of the consent form and for filing such form with the Clerk. The Clerk shall not accept for filing any consent form unless it has been signed by all parties to the action or their counsel.

No court approval of the election to arbitrate is required, unless any party or necessary witness is expected to be incarcerated at the time of arbitration.

(2) **Authority of Assigned Judge**.

A. Every action subject to this rule shall be assigned to a Judge and a Magistrate Judge upon filing in the normal course in accordance with Local Rule of Civil Procedure 5.1 and the assigned Judge and Magistrate Judge shall have authority, in his or her discretion, to conduct status, pretrial and settlement conferences, hear motions, and supervise the action in all other respects in accordance with these rules and the Federal Rules of Civil Procedure, notwithstanding the referral of the action to arbitration.

B. The Court, upon good cause shown, may modify any of the time periods for any action required under this rule.

(e) **Arbitration Hearing: Scheduling**. After the last responsive pleading is filed in a case wherein the parties have consented to arbitration and such consent has been approved by the Court when necessary, and after selection of the arbitrator(s), the Arbitration Clerk shall send a notice to counsel setting

forth the date, time and location for the arbitration hearing. In the event a third party has been brought into the action, the notice shall be sent after filing of the last responsive pleading in the third-party action.

If the parties have filed a request for an immediate hearing, subject to the schedule of the arbitrator(s), one shall be scheduled within thirty days of filing the request. In cases in which the parties have not requested an immediate hearing, the arbitration hearing shall be scheduled no later than 180 days from the date the last responsive pleading was filed. Notwithstanding the foregoing, the arbitration proceeding shall not, in the absence of the parties' consent, commence until thirty days after the disposition by the Court of any motion to dismiss the complaint, motion for judgment on the pleadings, or motion to join necessary parties, if the motion was filed and served within twenty days after the filing of the last responsive pleading. The specified time periods may be modified by the Court for good cause shown.

(f) **Arbitration Hearing: Prehearing Procedures**.

(1) **Disclosure**. Upon entry of the order designating the arbitrator(s), the Arbitration Clerk shall send to each arbitrator a copy of all the pleadings, a copy of the order designating the arbitrator(s), a copy of the court docket sheet and a copy of the Guidelines for Arbitrators. The arbitrator(s) shall forthwith inform all parties, in writing, as to whether the arbitrator(s) or any firm or member of any firm with which the arbitrator(s) is affiliated has (either as a party or attorney), at any time within the past five years, been involved in litigation with or represented any party to the arbitration, or any agency, division or employee of such party.

(2) **Delivery of Exhibits and Witness Lists**. At least ten days prior to the arbitration hearing, each counsel shall deliver to the arbitrator(s) and to adverse counsel pre-marked copies of all exhibits, including expert reports and all portions of depositions and interrogatories (except documents intended solely for impeachment purposes) to which reference will be made at the hearing and a list of all witnesses who are to testify at the hearing. Failure to deliver any exhibit within the prescribed time period may result in the preclusion of that exhibit at the arbitration hearing.

(3) **Continuances**. A matter shall not be adjourned absent extraordinary circumstances and the decision of the arbitrator(s) shall be final. Except as otherwise provided herein, the Arbitration Clerk must be notified immediately of any request for a continuance or any other situation or settlement of the case that would affect the hearing date.

(g) **Arbitration Hearing: Conduct of Hearing**.

(1) **Place of Holding Hearing**. Hearings shall be held at any location within the Western District of New York designated by the arbitrator(s). Hearings may be held in any courtroom or other room in any federal courthouse made available to the arbitrator(s) by the Clerk. When no such room is made available, the hearing shall be held at any suitable location selected by the arbitrator(s).

(2) **Nature of the Proceeding**. The arbitration hearing shall be conducted informally unless the parties agree to, and the Court approves, a more formal proceeding. Suitable instances for a more formal proceeding include matters in which the parties are bearing the expenses of an expert arbitrator which exceed the fees provided for herein, in which the parties have waived the right to demand a trial de novo, or in which the case will turn strictly on the quality of full testimony and other proofs and the Court agrees that a formal arbitration hearing is likely to substantially contribute to the just conclusion of the litigation. In receiving evidence, the arbitrator(s) shall be guided by the Federal Rules of Evidence but shall

not thereby be precluded from receiving evidence which he or she considers to be relevant and trustworthy and which is not privileged.

(3) **Authority of Arbitrator(s)**. The arbitrator(s) may make reasonable rules and issue orders necessary for the fair and efficient conduct of the hearing and may administer oaths and affirmations.

(4) **Testimony**. Necessary testimony shall be given under oath or affirmation and each party shall have the right to cross-examine witnesses except as herein provided.

(5) **Subpoenas**. Attendance of witnesses and production of documents may be compelled in accordance with Federal Rule of Civil Procedure 45.

(6) **Absence of a Party**. The arbitration hearing may proceed in the absence of any party who after notice fails to be present.

(7) **Transcripts**. A party may cause a transcript or recording to be made of the hearing at its expense but shall, at the request and expense of an opposing party, make a copy available to that party.

(8) **Communication with the Arbitrator(s)**. There shall be no ex parte communication between an arbitrator and any counsel or party on any matter relating to the action except for purposes of scheduling or continuing the hearing.

(h) **Award and Judgment.**

(1) **Award**. The arbitrator(s) shall file the award with the Clerk no more than ten days following the close of the hearing. The award shall state the name or names of the prevailing party or parties and the party or parties against which it is rendered, and the precise amount of money and other relief, if any, awarded including prejudgment interest, costs, fees and attorney's fees if authorized by statute or otherwise. The award shall be in writing and signed by the arbitrator or by at least two members of a panel. No panel member shall participate in the award without having attended the hearing. Arbitrators are not required to issue an opinion explaining the award, but they may do so.

As soon as the award is filed, the Clerk shall serve copies on the parties.

(2) **Judgment**. Unless a party files a demand for trial de novo within thirty days of the filing of the award, the Clerk shall enter judgment on the award in accordance with Federal Rule of Civil Procedure 58. A judgment so entered shall have the same force and effect as a judgment of the Court in a civil action, except that it shall not be subject to review in any other court by appeal or otherwise. In cases involving multiple claims or parties, any part of an award for which a party does not request a trial de novo in accordance with this rule shall become part of the final judgment with the same force and effect as a judgment of the Court in a civil action, except that it shall not be subject to review in any other court by appeal or otherwise.

(3) **Sealing of Award**. The contents of an arbitration award shall not be made known to any Judge or Magistrate Judge who might be assigned to preside at the trial of the case or rule on potentially case-dispositive motions until the Clerk has entered a final judgment in the action, the action has been

otherwise terminated, or except to prepare the report required by § 903(b) of the Judicial Improvements and Access to Justice Act.

(i) **Trial De Novo**.

(1) **Demand**. Within thirty days after the arbitration award is filed, any party may demand a trial de novo in the District Court on any or all issues presented at the arbitration hearing. If one party requests a trial de novo on fewer than all issues of the case, any other party may, within ten days after the original demand for trial de novo is filed, request a trial de novo on any or all other issues. The party demanding trial de novo shall serve a written demand for a trial de novo upon each counsel of record and upon any party not represented by counsel.

(2) **Restoration to the Docket**. Upon filing a demand for a trial de novo, the action shall be restored to the Court's docket, trial ready, and treated for all purposes as if it had not been referred to arbitration. The parties shall meet with the Judge or Magistrate Judge to determine a schedule for trial and other proceedings. Any right of trial by jury that a party otherwise would have had is preserved.

(3) **Withdrawal of Demand**. Withdrawal of a demand for trial de novo shall be filed with the Clerk and simultaneously served on all parties. Withdrawal of a demand for a trial de novo shall reinstate the arbitrator's award, unless within ten days thereafter any other party requests a trial de novo.

(4) **Evidence**. No evidence that an arbitration proceeding has occurred, the nature or amount of any award, or any other matter concerning the conduct of the arbitration proceeding shall be admitted at the trial de novo.

(5) **Costs**. As a prerequisite to trial de novo, the party demanding trial de novo, other than a party permitted to proceed in forma pauperis or the United States or its agencies or officers, shall deposit with the Clerk an amount equal to the cost of the arbitrator's services paid by the Administrative Office of the United States Courts. If that party fails to obtain judgment in an amount which, exclusive of interest and costs, is more favorable to that party, the Clerk shall retain the deposited monies for payment to the United States Treasury. If the party requesting trial de novo obtains a more favorable result, that party shall be reimbursed the prepaid costs.

No penalty for demanding a trial de novo, other than as provided in this subdivision, shall be assessed by the Court.

(j) **Arbitrators**.

(1) **Certification Of Arbitrators**. The Chief Judge or a Judge or Judges authorized by the Chief Judge (the "Certifying Judge") shall certify as many arbitrators as he or she determines to be necessary under this rule and shall have complete discretion and authority to thereafter withdraw the certification of any arbitrator at any time.

An individual may be certified to serve as an arbitrator if he or she: (1) is a member of the bar of the State of New York; (2) is admitted to practice before this Court; and (3) is determined by the Certifying Judge to be competent to perform the duties of an arbitrator. Any member of the bar possessing these qualifications who desires to obtain certification to act as an arbitrator shall complete an application form and file it with the Arbitration Clerk. The Arbitration Clerk shall forward such applications to the Certifying Judge

for review. The Clerk shall maintain a list of the names and addresses of all persons certified to act as arbitrators in this Court. Any person whose name appears thereon may ask at any time to have his or her name removed or, if selected to serve, may decline to serve but remain on the roster.

Alternatively, the parties to an action who have consented to arbitration may jointly request certification of an individual who possesses expertise in a field relevant to the particular action (an "expert arbitrator"). The Certifying Judge may, in his or her discretion, certify such an individual to act as an arbitrator for purposes of that particular action only.

Each individual certified to act as an arbitrator shall take the oath required by 28 U.S.C. § 453. An arbitrator is an independent contractor and is subject to the provisions of 18 U.S.C. §§ 201-211 to the same extent as such provisions apply to a special government employee of the Executive Branch. A person may not be barred from the practice of law because he or she is an arbitrator.

(2) **Selection of Arbitrators**. The parties may elect to proceed to arbitration before a single arbitrator or a panel of three arbitrators to be selected from the list of certified arbitrators maintained by the Clerk, or may jointly request the Court's permission to proceed to arbitration before a single expert arbitrator of their choice.

If the parties choose to proceed to arbitration before an arbitrator or arbitrators from the list maintained by the Clerk, selection of the arbitrator(s) shall be conducted at random by the Clerk or his or her designee. Not more than one member or associate of a firm or association of attorneys shall be appointed to the same panel of arbitrators.

The Clerk shall promptly send notice of the selection of the arbitrator(s) to the person or persons who are selected to serve as arbitrator(s) and to the parties.

On motion made to the Court not later than twenty days before a scheduled arbitration hearing, the Court may disqualify a person selected to be an arbitrator for bias or prejudice as provided in 28 U.S.C. § 144. Further, persons selected to be arbitrators shall disqualify themselves if they could be required to do so under 28 U.S.C. § 455 if they were a justice, judge or magistrate judge.

(3) **Compensation of Arbitrators**. Arbitrators shall be paid according to a schedule established by the Judicial Conference of the United States pursuant to 28 U.S.C. § 657(a). At the time that the arbitration award is filed, each arbitrator shall submit a voucher on the form prescribed by the Clerk for payment of compensation and out-of-pocket expenses necessarily incurred in the performance of his or her duties. In the event that the parties elect to proceed to arbitration before a single expert arbitrator of their selection, the parties are responsible for any fees assessed by the arbitrator that exceed the fees provided for in this rule.

RULE 23

CLASS ACTIONS

(a) The title of any pleading purporting to commence a class action shall bear the legend "Class Action" next to its caption.

(b) The complaint (or other pleading asserting a claim for or against a class) shall contain next after the jurisdictional grounds and under the separate heading "Class Action Allegations,":

(1) a reference to the portion or portions of Federal Rule of Civil Procedure 23 under which it is claimed that the action is properly maintainable as a class action, and

(2) appropriate allegations thought to justify the claim, including, but not necessarily limited to:

(A) the size (or approximate size) and definition of the alleged class;

(B) the basis on which the party or parties claim to be an adequate representative of the class;

(C) the alleged questions of law and fact claimed to be common to the class; and

(D) in actions claimed to be maintainable as class actions under Federal Rule of Civil Procedure 23(b)(3), allegations thought to support the findings required by that subsection.

(c) Within sixty days after issue having been joined in any class action, counsel for the parties shall meet with a District Judge or Magistrate Judge and a scheduling order shall issue providing for orderly discovery; such order may initially limit discovery only as to facts relevant to the certification of the alleged class.

(d) Within 120 days after the filing of a pleading alleging a class action, unless this period is extended on motion for good cause filed prior to the expiration of said 120-day period or in the scheduling order, the party seeking class certification shall move for a determination under Federal Rule of Civil Procedure 23(c)(1) as to whether the case is to be maintained as a class action. The motion shall include, but is not limited to, the following:

(1) a brief statement of the case;

(2) a statement defining the class sought to be certified, including its geographical and temporal scope;

(3) a description of the party's particular grievance and why that claim qualifies the party as a member of the class as defined;

(4) a statement describing any other pending actions in any court against the same party alleging the same or similar causes of actions, about which the party or counsel seeking class action certification is personally aware;

(5) in cases in which a notice to the class is required by Federal Rule of Civil Procedure 23(c)(2), a statement of what the proposed notice to the members of the class should include and how and when the notice will be given, including a statement regarding security deposit for the cost of notices; and

(6) a statement of any other matters that the movant deems necessary and proper to the expedition of a decision on the motion and the speedy resolution of the case on the merits.

The other parties shall respond to said motion in accordance with the provisions of these rules.

(e) In ruling upon a motion for class certification, the Court may allow the action to be so maintained, may disallow and strike the class action averments, or may order postponement of the determination pending discovery or such other preliminary procedures as appear to be appropriate and necessary under the circumstances. Whenever possible, where the determination is ordered to be postponed, a date shall be fixed for renewal of the motion before the same Judge.

(f) The burden shall be upon any party seeking to maintain a case as a class action to show that the action is properly maintainable as such. If the Court determines that an action may be maintained as a class action, the party obtaining that determination shall, unless otherwise ordered by the Court, initially bear the expenses of and be responsible for giving such notice as the Court may order to members of the class.

(g) Failure to move for class determination and certification within the time required herein shall constitute and signify an intentional abandonment and waiver of all class action allegations contained in the pleading and the action shall proceed as an individual, non-class action thereafter. If any motion for class determination or certification is filed after the deadline provided herein, it shall not have the effect of reinstating the class allegations unless and until it is acted upon favorably by the Court upon a finding of excusable neglect and good cause.

(h) The attorneys for the parties are governed by the Code of Professional Responsibility of the American Bar Association as adopted by the New York State Bar Association concerning contact with and solicitation of potential class members.

(i) No class action allegation shall be withdrawn, deleted, or otherwise amended without court approval. Furthermore, no class action shall be compromised without court approval and notice of the proposed compromise shall be given to all members of the class in such manner as the Court directs.

(j) Six months from the date of issue having been joined and every six months thereafter until the action is terminated, counsel in all class actions shall file with the Clerk a joint case status report indicating whether any motions are pending, what discovery has been completed, what discovery remains to be conducted, the extent of any settlement negotiations that have taken place and the likelihood of settlement, and whether the matter is ready for trial. Counsel shall provide a copy of the case status report to the CJRA Attorney.

(k) The foregoing provisions shall apply, with appropriate adaptations, to any counterclaim or cross-claim alleged to be brought for or against a class.

RULE 24

NOTICE OF CLAIM OF UNCONSTITUTIONALITY

If at any time prior to the trial of any action, suit, or proceeding, to which neither the United States, an individual state, nor any agency, officer or employee of either is a party, a party draws in question the constitutionality of an Act of Congress or a state statute affecting the public interest, such party shall forthwith and in writing notify the Court of the existence of such question and specifically identify the statute and the respects in which it is claimed to be unconstitutional. This will enable the Court to comply with the requirements of 28 U.S.C. § 2403.

RULE 26

DISCLOSURES; DISCOVERY LIMITATIONS AND COMMENCEMENT; MEETING OF PARTIES

(a) Required Disclosures

(1) **Initial Disclosures.** The parties are not obligated to provide the initial disclosures prescribed by Federal Rule of Civil Procedure 26(a)(1) unless otherwise ordered by the Court.

(2) **Expert Testimony.** The requirements of Federal Rule of Civil Procedure 26(a)(2) relating to the disclosure of expert testimony shall apply in all cases filed on or after December 1, 1993, unless otherwise ordered by the Court.

(3) **Pretrial Disclosures.** Except as otherwise ordered by the Court or as provided in rule 16.1(i) of these rules, the requirements of Federal Rule of Civil Procedure 26(a)(3) relating to final pretrial disclosures apply in cases set for trial subsequent to the adoption of this local rule. As a matter of policy, the address and phone number of each proposed witness need not be provided unless ordered by the Court.

(4) **Filing.** Except as otherwise ordered by the Court, disclosures under Federal Rule of Civil Procedure 26(a)(3) shall be filed with the Court promptly after being served. However, disclosures under Federal Rule of Civil Procedure 26(a)(1) and (a)(2) of this rule shall be filed only when ordered by the Court.

(b) Limits on Formal Discovery

(1) Formal discovery as provided by Federal Rules of Civil Procedure 30-36 is permissible in the following types of cases filed after December 1, 1993, but only after first obtaining the Court's approval:

Bankruptcy Appeals and Withdrawals
Condemnation Actions
Deportation Actions
Equal Access to Justice - Fee Award Appeals
Forfeiture and Statutory Penalty Actions
Freedom of Information Actions
Government Collection Actions
Judgments - Actions to Enforce or Register
Prisoner Actions to Vacate Sentence, for Habeas Corpus, or for Mandamus
Selective Service Actions
Social Security Reviews
Summons/Subpoenas - Proceedings to Enforce/Contest Government Summons and Private Party Depositions
Third-Party IRS Tax Actions.

(2) In all civil cases filed after the effective date of these rules, unless a different number is provided by court order or by stipulation, the maximum number of interrogatories and depositions shall be as provided in Federal Rules of Civil Procedure 30, 31, and 33. However, there is no limitation on the number of interrogatories or depositions in cases certified as class actions under Federal Rule of Civil Procedure 23, unless otherwise provided by court order.

(c) **Meeting of Parties.** Except as otherwise ordered by the Court, the provisions of Federal Rule of Civil Procedure 26(f) requiring a meeting of and report from the parties, shall not apply to civil actions in this District.

(d) **Commencement of Discovery.** Except as otherwise stipulated by the parties or ordered by the Court, formal discovery shall commence upon issue being joined in any case.

RULE 29

STIPULATIONS

All stipulations affecting a case before the Court, except stipulations which are made in open court and recorded by the court reporter, shall be in writing and signed, and shall be filed. Except to prevent injustice, no stipulation which does not satisfy these requirements shall be given effect.

RULE 30

PROCEDURES FOR DEPOSITIONS BY OTHER THAN STENOGRAPHIC MEANS

(a) A deposition by other than stenographic means (i.e. without the use of a stenographic record) may be taken only upon order of the Court. A deposition to be recorded on video tape and by stenographic means requires no prior order (except as required by subsection (b) of this rule). The following procedures shall be followed:

(1) The deposition notice shall state that the deposition will be recorded both stenographically and on video tape. At the deposition, the operator of the camera shall be identified; however, nothing shall preclude utilization of an employee of the attorney who noticed the deposition from acting as the camera operator.

(2) The camera shall be directed at the witness at all times showing a head and shoulders view, except that close-up views of exhibits are permitted where requested by the questioning attorney.

(3) Prior to trial, counsel for the party seeking to use the deposition at trial shall approach opposing counsel and attempt to resolve voluntarily all objections made at the deposition.

(4) Unresolved objections shall be submitted to the Court by way of a motion in limine made by the party seeking to use the deposition at trial. The motion may be made at any time after the deposition, but shall be made no later than one week before trial or in compliance with any date established by applicable order of the Court. The objected-to portion(s) of the transcript shall be annexed to such motion papers.

(5) In accordance with the Court's ruling on objections, the party seeking to use the deposition shall notify opposing counsel of the pages and line numbers of the deposition transcript which the party plans to delete from the video tape. The party seeking to use the video tape deposition at trial shall then edit the tape accordingly, and shall bear the expenses of editing. If the Court overrules an objection made during the deposition, such objection need not be deleted. If requested, an instruction from the Court at the time the deposition is shown regarding objections heard on the tape will be given.

(6) At least three days before showing the tape, the party seeking to use the tape at trial shall deliver a copy of the edited tape to opposing counsel. Opposing counsel may only object at that time if the edited version does not comply with the Court's ruling and the agreement of counsel set forth above, or if the quality of the tape is such that it will be difficult for the jury to understand. Such objections, if any, must be made in writing and served at least 24 hours before the tape is to be shown.

(7) The party seeking to use the video tape deposition must provide the equipment necessary to do so in court.

(b) Any additional costs incurred in recording the deposition on video tape will not be taxed as allowable costs by the Clerk without a prior order from the Court allowing such costs.

RULE 37

MANDATORY PROCEDURE FOR ALL DISCOVERY MOTIONS

To promote the efficient administration of justice and unless ordered otherwise, no motion for discovery and/or production of documents under Federal Rules of Civil Procedure 26-37 shall be heard unless moving counsel notifies the Court by written affidavit that sincere attempts to resolve the discovery dispute have been made. Such affidavit shall detail the times and places of the parties' meetings, correspondence or discussions concerning the discovery dispute, and the names of all parties participating therein.

RULE 38

REQUESTS FOR JURY TRIALS IN CASES REMOVED FROM STATE COURT

In any action removed to this Court from the courts of the State of New York, pursuant to 28 U.S.C. § 1446, within ten days after removal is effected, the Clerk of the Court shall provide written notice to all parties advising that, unless a written request is made for a jury trial within thirty days of the date of such notice, the right to a jury trial is deemed to have been waived.

RULE 41.1

SETTLEMENTS AND APPROVAL OF SETTLEMENTS ON BEHALF OF INFANTS, INCOMPETENTS AND DECEDENTS' ESTATES

(a) **Settlement**. When a case is settled, the parties shall, within ten days, file in the office of the Clerk a signed agreement for judgment or stipulation for dismissal as appropriate, unless the Judge extends the time. If no such agreement is filed, the Judge may enter an order dismissing the case as settled, without costs, and on the merits.

(b) **Settlements of Actions on Behalf of Infants or Incompetents**.

(1) An action by or on behalf of an infant or an incompetent shall not be settled or compromised, voluntarily discontinued, dismissed or terminated without leave of court. The proceeding upon an application to settle or compromise such an action shall conform, as nearly as possible to Sections 1207 and 1208 of New York's Civil Practice Law and Rules, but the Judge, for cause shown, may dispense with any New York State requirement.

(2) The Judge shall determine whether such application requires a hearing and whether the presence of the infant or incompetent together with his or her legal representative is required at such hearing.

(3) The Judge shall authorize payment of a reasonable attorney's fee and proper disbursements from the amount recovered in such an action, whether realized by settlement, execution or otherwise, and shall determine such fee and disbursements, after due inquiry as to all charges against the fund.

(4) The Judge shall order the balance of the proceeds of the settlement or recovery to be distributed pursuant to Section 1206 of New York's Civil Practice Law and Rules, or upon good cause shown, pursuant to such plan as the Judge deems necessary to protect the interests of the infant or incompetent.

(c) **Settlements of Actions Brought on Behalf of Decendents' Estates**.

(1) Actions brought on behalf of decedents' estates shall not be settled or compromised, or voluntarily discontinued, dismissed or terminated, without leave of court. The application to settle or compromise shall include a signed affidavit or petition by the estate representative and a signed affidavit of the representative's attorney addressing the following:

(A) the circumstances giving rise to the claim;

(B) the nature and extent of the damages;

(C) the terms of the proposed settlement, including the attorneys' fees and disbursements to be paid out of the settlement;

(D) the circumstances of any other claims or settlements arising out of the same occurrence; and

(E) the reasons why the proposed settlement is believed to be in the best interests of the estate and distributees.

(2) Counsel shall submit a proposed order approving the settlement.

(3) The Judge shall determine whether a hearing to determine the application is necessary.

(4) After approval of the settlement, attorneys' fees and disbursements, the Judge shall direct the estate representative to make application to the appropriate Surrogate of the State of New York or analogous jurist of another state for an order of distribution of the net proceeds of the settlement pursuant to either Section 5-4.4 of New York's Estate Powers and Trusts Law or the analogous provision of the law of the appropriate state.

RULE 41.2

DISMISSAL FOR FAILURE TO PROSECUTE

(a) If a civil case has been pending for more than six months and is not in compliance with the directions of the Judge or a Magistrate Judge, or if no action has been taken by the parties in six months, the Clerk shall issue a written order to the parties to show cause within thirty days why the case should not be dismissed for failure to prosecute. The parties shall respond to the order by sworn affidavits explaining in detail why the action should not be dismissed. They need not appear in person. No explanations communicated in person, over the telephone, or by letter shall be acceptable.

(b) If the parties fail to respond as required in section (a), the Judge may issue a written order dismissing the case for failure to prosecute or providing for sanctions or making other directives to the parties as justice requires.

RULE 47.1

JURY TRIALS - CIVIL ACTIONS

(a) The jury in a civil case shall consist of no fewer than six and not more than twelve members. All verdicts shall be by unanimous vote of the jurors.

(b) Challenges shall be permitted as provided in 28 U.S.C. § 1870 and Federal Rule of Civil Procedure 47(b). The Court may for good cause excuse a juror from service during trial or deliberation, but no verdict shall be taken from a jury reduced in size to fewer than six members unless so stipulated by the parties.

(c) Unless otherwise ordered, interrogation of prospective jurors on voir dire examination shall be conducted by the Court. Counsel may submit proposed questions in writing to the Judge or Magistrate Judge prior to or during the voir dire examination. The Judge or Magistrate Judge in his or her discretion also may permit questions to be submitted orally.

(d) In a civil case in which a jury trial has been properly demanded, the jury may be selected by either the panel method or the struck method as determined by the Court.

(e) The method for selecting the jury pursuant to the panel method shall be as follows:

(1) The deputy will at random call names from the available panel and direct those persons to be seated in the jury box in the order in which they are called. The total number to be seated shall be determined by the Court.

(2) The Court will conduct voir dire in accordance with Local Rule of Civil Procedure 47.1(c). If counsel are permitted voir dire, counsel may question the jury at this time.

(3) The Court will excuse any prospective jurors for cause where appropriate, acting either sua sponte or upon application of a party, and replace them with new prospective jurors.

(4) When the Court has determined that none of the prospective jurors in the jury box should be dismissed for cause, the parties may exercise their peremptory challenges.

(5) Each side in a civil case may exercise or waive three peremptory challenges, pursuant to 28 U.S.C. § 1870. These challenges shall be exercised in three rounds, one challenge for each side in each round. If a challenge is not exercised by either party for that round, it is waived. After each round of challenges is exercised, the Clerk shall call names from the panel to replace the challenged jurors. After new jurors are seated, the procedure in Local Rule of Civil Procedure 47.1(e)(2)-(5) shall be repeated. At any time before the panel is sworn, a party may exercise a challenge as to any juror seated in the box.

(6) After all parties have exercised all of their challenges, the jury shall be sworn.

(f) The method for selecting a jury pursuant to the struck system shall be as follows:

(1) The deputy will call at random from the panel a number of prospective jurors equal to the total number of all jurors and all peremptory challenges for all parties in the action. Those persons will be seated in the jury box in the order they are called.

(2) The Court will conduct voir dire in accordance with Local Rule of Civil Procedure 47.1(c). If counsel are permitted voir dire, counsel may question the jury at this time.

(3) The Court will excuse any prospective jurors for cause where appropriate, acting either sua sponte or upon application of a party, and replace them with new prospective jurors.

(4) When the Court has determined that none of the prospective jurors in the jury box should be dismissed for cause, the parties may exercise their peremptory challenges.

(5) Each side in a civil case may exercise or waive three peremptory challenges pursuant to 18 U.S.C. § 1870. These challenges shall be exercised in rounds, one challenge for each side in each round. No further jurors will be called to replace those jurors excused by peremptory challenges. At the conclusion of the parties' rounds, the Court shall announce those jurors who shall constitute the jury, and they shall be sworn.

(g) In a case with multiple defendants, the attorneys for defendants shall confer and jointly exercise their peremptory challenges. No additional peremptory challenges shall be provided solely because the case involves more than one defendant.

RULE 47.2

JURORS

Selection of petit jurors is made by random selection from voter registration lists and New York State Department of Motor Vehicles records pursuant to the Jury Selection Plan for the Western District of New York dated February 18, 1994, and approved by the Second Circuit Judicial Council. A copy of the Plan is available in the Clerk's office.

RULE 54

COSTS

(a) Within thirty days after entry of final judgment, a party entitled to recover costs shall submit to the Clerk, upon forms provided by the Clerk, a verified bill of costs. Upon motion to retax the costs filed within five days after the costs are taxed, the Clerk's action may be reviewed by the Court.

(b) Subject to the provisions of Federal Rule of Civil Procedure 54(d)(1), the expense of any party in obtaining all or any part of a transcript for the use of the Court when ordered by it, the expense of any party in necessarily obtaining all or any part of a transcript for the purposes of a new trial, or for amended findings, or for appeals, shall be a taxable cost against the unsuccessful party at the rates prescribed by the Judicial Conference of the United States.

(c) Unless otherwise ordered by the District Court or Circuit Court of Appeals, pursuant to Federal Rule of Appellate Procedure 8, the filing of an appeal shall not stay the taxation of costs, entry of judgment thereon, or enforcement of such judgment.

RULE 55

DEFAULT JUDGMENT

(a) **By the Clerk**. A party entitled to entry of default by the Clerk, pursuant to Federal Rule of Civil Procedure 55(b)(1), shall submit with the form of judgment a statement showing the principal amount due, which shall not exceed the amount demanded in the complaint, giving credit for any payments and showing the amounts and dates thereof, a computation of the interest to the day of judgment, and the costs and taxable disbursements claimed. The proposed judgment shall contain the last known address of each of the judgment creditors and judgment debtors. If there is no known address for any judgment creditor or judgment debtor, an affidavit executed by either the party at whose instance a judgment is docketed or the party's attorney shall be filed stating that the affiant has no knowledge of an address. An affidavit of the party or his or her attorney shall be appended to the statement showing:

(1) that the party against whom judgment is sought is not an infant or an incompetent person;

(2) that the party has defaulted in appearance in the action;

(3) that the amount shown by the statement is justly due and owing and that no part thereof has been paid except as therein set forth; and

(4) that the disbursements sought to be taxed have been made in the action or will necessarily be made or incurred therein.

The Clerk shall thereupon enter judgment for principal, interest and costs.

(b) **By the Court**. An application to the Court for the entry of a default judgment, pursuant to Federal Rule of Civil Procedure 55(b)(2), shall be accompanied by a certificate of the Clerk of the entry of the default and by a copy of the pleading to which no response has been made.

RULE 56

STATEMENTS OF FACT REQUIRED IN SUMMARY JUDGMENT MOTIONS

In any motion for summary judgment pursuant to Federal Rule of Civil Procedure 56, there shall be annexed to the notice of motion a separate, short, and concise statement of the material facts as to which the moving party contends there is no genuine issue to be tried. The papers opposing a motion for summary judgment shall include a separate, short, and concise statement of the material facts as to which it is contended that there exists a genuine issue to be tried. All material facts set forth in the statement required to be served by the moving party will be deemed admitted unless controverted by the statement required to be served by the opposing party. The motion for summary judgment may be denied if the movant fails to annex the statement required by this rule.

RULE 58

SATISFACTION OF JUDGMENTS

Satisfaction of a money judgment recovered or registered in this District shall be entered by the Clerk as follows:

(a) Upon the payment of the judgment into the registry of the Court, but such payment may only be made pursuant to a prior order of the Court authorizing such payment;

(b) Upon the filing of a satisfaction piece executed and acknowledged by:

(1) the judgment creditor; or

(2) his or her legal representatives or assigns, with evidence of their authority; or

(3) his or her attorney, if within five years of the entry of the judgment or decree.

(c) If the judgment creditor is the United States, upon the filing of a satisfaction piece executed by the United States Attorney; or

(d) Upon the registration of a certified copy of a satisfaction entered in another District.

RULE 65.1

COST BONDS

The Court may, upon motion and for good cause shown, require any party seeking affirmative relief to post a cost bond in a form and in an amount to be approved by the Court.

RULE 67

DEPOSITS OF MONEY INTO COURT

(a) **General Orders Regarding Funds**. The Court's directions to the Clerk regarding (1) the investment of monies placed in the custody of the Court or of the Clerk and (2) the assessment of court fees against such monies are contained in various General Orders of the Court and amendments thereto, available in the Clerk's offices.

(b) **Monies Deposited Without a Special Order**. Whenever money is permitted by statute or rule to be deposited into court without leave of court (e.g. in condemnation proceedings governed by Federal Rule of Civil Procedure 71A(j) or is directed by the Court to be deposited as a condition to some form of relief (e.g. cash bail, cash bonds), General Orders shall govern the investment of such funds upon their receipt by the Clerk.

(c) **Monies Deposited With a Special Order**. Whenever statute or rule requires that leave of court be obtained for the deposit of money into the Court (e.g. Federal Rule of Civil Procedure 67), a proposed order granting such leave must be approved as to form by the Clerk, the Chief Deputy Clerk or the Financial Deputy Clerk before submission to the Court, and notice of the granting of such order must be served upon the person of the Clerk, the Chief Deputy Clerk or the Financial Deputy Clerk. If and to the extent that any such order fails to instruct the Clerk as to the handling of such funds, they shall be handled in accordance with the aforesaid General Orders.

(d) **Court Fees**. Such fees are promulgated and required by the Judicial Conference of the United States pursuant to 28 U.S.C. § 1914(b) and are enforced locally by this Court's General Order of August 31, 1994 and any amendments thereto. In no event may the Clerk be instructed not to collect court fees from funds in the Clerk's custody.

(e) **Disbursing/Reinvesting Orders**. Any proposed order for disbursement or reinvestment of such funds must be approved as to form by the Clerk, Chief Deputy Clerk, or Financial Deputy Clerk before submission to the Court.

(f) **Alternatives**. Parties and others are encouraged to consider alternatives which do not involve the receipt of monies by the Clerk, such as escrow accounts, joint signature accounts in the names of counsel,

and letters of credit. Such alternatives avoid the imposition of court fees and may provide greater flexibility to maximize yield for the benefit of the parties.

RULE 72.1

AUTHORITY OF MAGISTRATE JUDGES

(a) A full-time United States Magistrate Judge is authorized to exercise all powers and perform all duties conferred upon Magistrate Judges by 28 U.S.C. § 636(a), (b) and (c).

(b) Notwithstanding any other rule of this Court, a United States Magistrate Judge may be assigned such additional duties as are not inconsistent with the Constitution or Laws of the United States.

RULE 72.2

ASSIGNMENT OF MATTERS TO MAGISTRATE JUDGES

(a) Upon filing, all civil cases shall be assigned by the Clerk to a District Judge and a Magistrate Judge. The Judge to whom the case is assigned shall designate the Magistrate Judge to conduct pre-trial procedures pursuant to Local Rule of Civil Procedure 16.1.

(b) (1) **Notice**.

Upon the filing of a complaint, the Clerk shall provide to plaintiff or his or her representative, a notice, as approved by the Court, informing the parties of the availability of a Magistrate Judge to conduct any or all proceedings in the case and order the entry of a final judgment. Additional copies of the notice may be furnished to the parties at later stages of the proceedings and may be included with pre-trial notices and instructions. The decision of the parties shall be communicated to the Clerk of the Court. Thereafter, either the District Court Judge or the Magistrate Judge may again advise the parties of the availability of the Magistrate Judge, but in so doing, shall also advise the parties that they are free to withhold consent without adverse substantive consequences. This rule, however, shall not preclude a Judge or Magistrate Judge from both informing the parties that they have the option of referring a case to a Magistrate Judge in accord with this rule and reminding the parties of such option, as appropriate throughout the progress of the case. The consent may be filed at any time prior to trial, subject to the approval of the Judge to whom the case has been assigned.

(2) **Execution of Consent**.

The Clerk shall not accept a consent form unless it has been signed by all of the parties or their attorneys in the case. The plaintiff shall be responsible for filing such consent form, executed by all parties, with the Clerk of the Court. No consent form shall be made available, nor will its contents be made known, to any Judge or Magistrate Judge, unless all parties have consented to the reference to a Magistrate Judge.

(3) **Reference**.

After the consent form has been executed and filed, the Clerk shall transmit it to the Judge to whom the case has been assigned for approval and referral of the case to a Magistrate Judge. Once the case has been assigned to a Magistrate Judge, the Magistrate Judge shall have the authority to conduct any and all proceedings to which the parties have consented and to direct the Clerk to enter a final judgment in the same manner as if a Judge had presided.

(4) **Additional Parties**.

Any parties added to an action after reference to a Magistrate Judge shall be notified by the Clerk of their rights to consent to the exercise of jurisdiction by the Magistrate Judge and of their appellate rights pursuant to 28 U.S.C. § 636(c)(3), (4) and (5). In the event an added party does not consent to the Magistrate Judge's jurisdiction, the action shall be returned to the Judge for further proceedings. In the event that an added party consents to proceeding before the Magistrate Judge but does not consent to appeal to the District Court, appeal shall be to the United States Court of Appeals for the

Second Circuit even though all prior parties may have consented to initial appellate review by the District Court.

RULE 72.3

REVIEW AND APPEAL OF MAGISTRATE JUDGES' ACTIONS

(a) **Review**.

(1) Review of a Magistrate Judge's orders or of his or her proposed findings of fact and recommendations for disposition shall be governed by 28 U.S.C. § 636(b)(1). If the parties consent to trial before the Magistrate Judge, there shall be no review or appeal of interlocutory orders to the District Court.

(2) All orders of the Magistrate Judge issued pursuant to these rules, as authorized by 28 U.S.C. § 636(b)(1)(A), shall be final unless within ten days after being served with a copy of the Magistrate Judge's order, a party files with the Clerk and serves upon opposing counsel a written statement specifying the party's objections to the Magistrate Judge's order. The specific matters to which the party objects and the manner in which it is claimed that the order is clearly erroneous or contrary to law shall be clearly set out.

(3) A party may object to proposed findings of fact and recommendations for dispositions submitted by a Magistrate Judge pursuant to 28 U.S.C. § 636(b)(1)(B), by filing with the Clerk and serving upon opposing counsel written objections to the proposed findings and recommendations within ten days after being served with a copy of such findings and recommendations, as provided in 28 U.S.C. § 636(b)(1)(C). The time for filing objections to the proposed findings and recommendations may be extended by direction of the Judge. The written objections shall specifically identify the portions of the proposed findings and recommendations to which objection is made and the basis for such objection and shall be supported by legal authority.

(b) **Appeal from Judgments in Civil Cases (28 U.S.C. § 636(c)(1))**.

(1) **Appeals to the Circuit Court**. Unless the parties have consented to appeal to a District Judge as provided in 28 U.S.C. § 636(c)(4), upon entry of a judgment in any civil case on consent of the parties under authority of 28 U.S.C. § 636(c)(1) and Local Rule of Civil Procedure 72.2(b), a party shall appeal directly to the United States Court of Appeals for the Second Circuit in the same manner as an appeal from any other judgment of this Court.

(2) **Appeal to a District Judge**.

(A) **Notice of Appeal**.

In accordance with 28 U.S.C. § 636(c)(4), the parties may consent to appeal any judgment in a civil case disposed of by a Magistrate Judge to a Judge of this Court. In such case, the appeal shall be taken by filing a notice of appeal with the Clerk of the Court within thirty days after entry of the Magistrate Judge's judgment; but if the United States or an officer or agency thereof is a party, the notice of appeal may be filed by any party within sixty days of entry of the judgment. For good cause shown, the Magistrate Judge or a Judge may extend the time for filing the notice of appeal for an additional thirty days from the expiration of the original time herein prescribed. Any request for such extension shall be made before the original time period for such appeal has expired. In the event a motion for a new trial is timely filed, the time for appeal from the judgment of the Magistrate Judge shall be extended to thirty days from the date of the ruling on the motion for a new trial, unless a different period is provided by the Federal Rules of Civil Procedure.

(B) **Service of the Notice of Appeal**.

The Clerk shall serve notice of the filing of a notice of appeal by mailing a copy thereof to counsel of record for all parties other than the appellant, or if a party is not represented by counsel, to the party at his or her last known address.

(C) **Record on Appeal**.

The record on appeal to a Judge shall consist of the original papers and exhibits filed with the Court and the transcript of the proceedings, if any, before the Magistrate Judge. Every effort shall be made by the parties, counsel, and the Court to minimize the production and costs of transcriptions of the record and otherwise to render the appeal expeditious and inexpensive, as mandated by 28 U.S.C. § 636(c)(4).

(D) **Memoranda**.

The appellant shall within thirty days of the filing of the notice of appeal file a typewritten memorandum with the Clerk stating the specific facts, points of law, and authorities on which the appeal is based. The appellant shall concurrently serve a copy of the memorandum on the appellee(s). The appellee(s) shall file with the Clerk and serve upon opposing counsel an answering memorandum within thirty days for the filing of the appellant's memorandum. The Court may extend these time limits upon a showing of good cause. Any request for such extension shall be made before the prescribed time period has expired. Such good cause may include reasonable delay in the preparation of any necessary transcript. If an appellant fails to file such memorandum within the time provided by this rule, or any extension thereof, the Court may dismiss the appeal. Absent prior court approval, memoranda shall not exceed twenty-five pages in length. Applications to exceed these page limits shall be made in writing by letter to the Court with copies to all counsel.

(E) **Disposition of the Appeal by a Judge**.

The Judge shall consider the appeal on the record, in the same manner as if the case had been appealed from a judgment of the District Court to the Court of Appeals and may affirm, reverse, or modify the Magistrate Judge's judgment, or remand with instructions for further proceedings. The Judge shall accept the Magistrate Judge's findings of fact unless they are clearly erroneous and shall give due regard to the opportunity of the Magistrate Judge to judge the credibility of the witnesses.

(c) **Appeals from Other Orders of a Magistrate Judge**.

Appeals from any other decisions and orders of a Magistrate Judge not provided for in this rule shall be taken as provided by governing statute, rule or decisional law.

RULE 76.1

APPEALS

(a) Appellant shall file a notice of appeal in accord with Federal Rule of Appellate Procedure 3. Such notice of appeal shall include the names of the parties to the judgment and the names and addresses of their respective attorneys of record.

(b) In addition to the original notice of appeal, appellant shall file sufficient copies to serve all counsel and the Clerk of the Circuit Court of Appeals.

(c) Counsel share the responsibility of preparing the index for the record on appeal. Upon completion, the index shall be presented to the Clerk for transmittal to the United States Court of Appeals for the Second Circuit or to the United States Supreme Court.

(d) Counsel shall, wherever possible and consistent with the Federal Rules of Appellate Procedure, stipulate to the designation of less than the entire trial record.

(e) Counsel are cautioned to examine and follow both the Federal Rules of Appellate Procedure and the Rules of the United States Court of Appeals for the Second Circuit.

RULE 76.2

BANKRUPTCY APPEALS; DISMISSAL FOR FAILURE TO PERFECT

If the appellant shall fail to perfect the appeal in the manner prescribed by Federal Rule of Bankruptcy Procedure 8006, the Clerk of the Bankruptcy Court shall forward to the Clerk of the District Court the notice of appeal, a copy of the order or judgment appealed from, a copy of the docket entries and such other papers as the Clerk of the Bankruptcy Court deems relevant to the appeal. When the partial record has been filed in the District Court, the Court may, upon motion of the appellee filed with the District Court or upon its own initiative, dismiss the appeal for non-compliance with Federal Rule of Bankruptcy Procedure 8006.

RULE 77.1

SESSIONS OF COURT

Regular and continuous sessions of the Court shall be held at Buffalo and Rochester.

Special sessions of court may be held at such places in the District and for such periods of time as may be practicable and as the nature of the Court's business may require.

RULE 77.2

ORDERS

Orders of discontinuance or dismissal, whether by consent or otherwise, shall be presented to the Court for signature, except such orders listed herein which the Clerk may sign without submission to a Judge:

(1) Orders on consent for the substitution of attorneys in civil cases not yet scheduled for trial; and

(2) Orders on consent satisfying decrees and orders on consent canceling stipulations and bonds.

After the Court has instructed a prevailing party to submit an order, the prevailing party shall submit to the Court a proposed order which has been approved by opposing counsel and which contains the endorsement of opposing counsel: "Approved as to form and substance."

RULE 77.3

COPIES OF LOCAL RULES

Copies of these rules, and the amendments and appendices to them, shall be available upon request in the offices of the Clerk of Court in both Rochester and Buffalo. Persons other than litigants who are permitted to proceed in forma pauperis in a pending case seeking to obtain a copy of these rules by mail must provide a self-addressed envelope of at least 9" x 12" in size with sufficient postage affixed.

RULE 78

MOTION AND NATURALIZATION DAYS

Unless otherwise ordered by the Court:

(a) Motions and hearings on all contested matters shall be heard on the dates and times set by each individual Judge in the Western District of New York. Information regarding such dates and times may be obtained from the Clerk's office.

(b) Petitions of aliens to become citizens of the United States shall be heard at Buffalo or at any other place at those times specially designated by the Court.

(c) If the Judge assigned to hold the Court shall be absent, the Clerk of the Court shall adjourn the hearings on motions or applications to some convenient day.

(d) All motions and notice thereof shall be governed by the Federal Rules of Civil Procedure. Original motion papers shall be filed in the Clerk's office, either at the United States Courthouse, Buffalo, New York or at the United States Courthouse, Rochester, New York.

(e) Except as provided in subdivision (f), any application for adjournment of a motion shall be made by the attorney, or by an associate, to the courtroom deputy of the Judge before whom the motion is to be argued. No such application is to be made to a Judge's law clerk. In requesting an adjournment, the following guidelines shall be adhered to:

(1) The party seeking the adjournment shall first confer with all other parties before approaching the courtroom deputy;

(2) A suggested rescheduled date, agreeable to all parties, shall be determined, if possible; and

(3) The party seeking the adjournment shall notify the courtroom deputy in writing, unless unforeseen circumstances prohibit written notice, of the request and the suggested new date.

(f) Requests for adjournments by pro se litigants must be made in writing, by letter to the Court, with copies to all other counsel in the case.

RULE 79

EXHIBITS

(a) In a civil trial, the exhibits shall be marked by counsel prior to the final pre-trial conference in accordance with Local Rule of Civil Procedure 16.1(k).

(b) Unless the Court otherwise directs, exhibits (except those produced by non-parties) shall not be filed with the Clerk but shall be retained in the custody of the respective attorneys who produce them in court. Immediately after the case is submitted to the trier of fact, all exhibits which were received into evidence shall be delivered to the courtroom deputy. In the case of an appeal or other review by an appellate court, all such exhibits necessary to perfect the appeal shall be made available for inclusion in the record on appeal pursuant to the Federal Rules of Appellate Procedure. Upon expiration of the time allowed for appeal, the Clerk shall notify the parties that the exhibits must be claimed within thirty days. Any unclaimed exhibits may be destroyed without further notice to the parties.

RULE 83.1

ATTORNEY ADMISSION TO PRACTICE

(a) **Who May Apply**. A person admitted to practice before the courts of New York State, including those admitted pursuant to Rule 520.9(e) of the Rules of the New York Court of Appeals, may, on motion of a member of the bar of this Court, apply to be admitted to practice in this Court upon compliance with the following provisions of this rule. Qualification to appear as an attorney of record remains subject to Local Rule of Civil Procedure 83.2.

(b) **Verified Petition**. Each applicant for admission shall file with the Clerk of this Court at least thirty days prior to a hearing thereon (unless for good cause shown the Court shortens the time) a verified petition for admission stating:

(1) the applicant's residence and office addresses;

(2) the applicant's educational background and major areas of professional activities since initial admission to the bar;

(3) the time, place and court where initially admitted;

(4) whether the applicant has ever been held in contempt of court, or censured in a disciplinary proceeding, suspended or disbarred by any court or admonished by any disciplinary committee of the organized bar, or is the subject of any pending complaint before any court. If the answer is in the affirmative, the applicant shall file a separate confidential statement under seal specifying the court or disciplinary committee imposing the sanction, the date, the facts giving rise to the disciplinary action or complaint, the sanction imposed, and such other information, including any facts of a mitigating or exculpatory nature as may be pertinent, and such confidential statement, together with the petition, shall promptly be transmitted by the Clerk to the Chief Judge of the District for review;

(5) that the applicant has read and is familiar with:

(A) the provisions of the Judicial Code, 28 U.S.C. §§ 1130-1452, which pertain to jurisdiction of and venue in a United States District Court;

(B) the Federal Rules of Civil Procedure;

(C) the Federal Rules of Criminal Procedure;

(D) the Federal Rules of Evidence;

(E) the Local Rules of Practice for the United States District Court for the Western District of New York;

(F) the Revised Plan for the Prompt Disposition of Criminal Cases for the Western District of New York; and

(G) the Code of Professional Responsibility of the American Bar Association as adopted by the New York State Bar Association.

(6) that the applicant agrees to adhere faithfully to the Code of Professional Responsibility of the American Bar Association as adopted by the New York State Bar Association.

(c) **Time for Admissions**. Applications for admission shall be entertained on the scheduled motion days in Rochester and Buffalo, or on other days deemed appropriate by the Court.

(d) **Affidavit of Sponsoring Attorney**. The verified petition shall be accompanied by an affidavit of an attorney of this Court stating when the affiant was admitted to practice in this Court, how long and under what circumstances the affiant has known the applicant, and what the affiant knows of the applicant's character.

(e) **Attorneys Admitted to Other Districts Within the State**. A member in good standing of the bar of the United States District Court for the Southern, Eastern or Northern District of New York may be admitted to practice in this Court without formal application upon filing with this Court a certificate of the United States District Court for such District stating that he or she is a member in good standing of the bar of that Court, together with a completed attorney's oath and the proper fee.

(f) **Attorneys Admitted to Districts Outside the State**. A member in good standing of any United States District Court and of the bar of the state in which such District Court is located and in which the applicant maintains an office for the practice of law, provided such District Court by rules extends a corresponding privilege to the members of the bar of this Court, may apply to be admitted to practice in this Court on compliance with the provisions of parts (b), (c), (d), (g) and (l) of this rule.

(g) **Oath, Pro Bono Service**. Prior to being admitted to this Court, each applicant must take the oath of admission to this Court. Every member of the bar of this Court shall be available upon the Court's request for appointment to represent or assist in the representation of indigent parties. Appointments under this rule shall be made in a manner such that no attorney shall be requested to accept more than one appointment during any twelve month period.

(h) **Change of Address, Etc.**. All attorneys admitted to practice before this Court must advise the Clerk in writing of any change in name, firm affiliation, office address or telephone number within thirty days of such change.

(i) **Admission Pro Hac Vice**. An attorney duly admitted to practice in any state, territory, district or foreign country may in the discretion of the Court be admitted pro hac vice to participate before the Court in any matter in which he or she may for the time be employed.

(j) **Government Attorneys**. An attorney appointed by the United States Attorney General as a United States Attorney, an Assistant United States Attorney, a special attorney under 28 U.S.C. §§ 541-543, as an attorney of the Department of Justice under 28 U.S.C. § 515, or as an attorney employed by a federal agency, shall be admitted to practice before the Court on any matter within the scope of such employment.

(k) **Admission to Practice in Bankruptcy Matters**. Practice in bankruptcy matters before either the District Judges or the Bankruptcy Judges of this District shall be limited to attorneys admitted

under this rule, subsections (a)-(j). Such attorney shall certify knowledge of such sources and provisions of bankruptcy law and rule as the Bankruptcy Court shall require by local rule approved by this Court. The "local counsel" requirement of Rule 83.2 shall not apply in bankruptcy matters unless otherwise directed by a District Judge or Bankruptcy Judge in a specific matter. This subsection of this rule shall not apply to a student admitted under the Student Practice Rule of the Bankruptcy Court.

(l) **Fees for Admission**. Each applicant for admission to this Court shall pay the fee set by the Judicial Conference plus an additional fee set by the Court. Attorneys who are admitted pro hac vice shall pay to the Clerk a fee in the amount set by the Court unless such fee is waived by the presiding Judge or Magistrate Judge upon a showing of good cause. Applicants for admission should contact the Clerk's office for exact fee information. A portion of the fee charged to applicants for admission to practice before the Court and to attorneys admitted pro hac vice shall be deposited in the District Court Fund.

The Clerk shall be the trustee of the District Court Fund. Monies deposited in the District Court Fund shall be used only for the benefit of the bench and bar in the administration of justice, including, but not limited to, reimbursement of expenses incurred by counsel assigned to represent indigent clients pursuant to the provisions of this rule.

(m) **Expenses of Assigned Counsel**. Pro bono attorneys who are appointed pursuant to this rule and are unsuccessful in obtaining counsel fees may seek reimbursement for expenses incident to representation of indigent clients by application to the Court. Reimbursement will be permitted to the extent possible in light of available resources and pursuant to the Plan for the Administration of the District Court Fund on file with the Clerk.

RULE 83.2

ATTORNEYS OF RECORD

(a) Except as set forth below, only members in good standing of the bar of this Court may appear as attorneys of record.

An attorney who does not maintain an office in this District may commence an action. If such attorney wishes to continue as attorney of record, he or she shall, within thirty days of the initial filing, apply in writing for permission to proceed without local counsel, which application shall be granted for good cause shown and in the discretion of the Court. Such attorney shall also, as appropriate, apply for admission pro hac vice pursuant to Local Rule of Civil Procedure 83.1.

(1) Except for attorneys appearing on behalf of the United States government or a department or agency thereof, or as otherwise provided in Local Rule of Civil Procedure 83.2(a), any attorney who is not a member of the bar of this Court shall, unless otherwise ordered by the Court, in each proceeding in which he or she desires to appear, have as associate counsel of record ("local counsel") a member of the bar of this Court who maintains an office within this District, with whom the Court and opposing counsel may readily communicate regarding the conduct of this case and upon whom papers may be served.

(2) In accord with Federal Rules of Civil Procedure 11 and 26(g), an attorney who is not a member of the bar of this Court may sign a pleading, motion, request for discovery, discovery response, objection thereto and other papers, provided local counsel has been appointed or the requirement thereof waived by the Court pursuant to Local Rule of Civil Procedure 83.2(a).

(3) An attorney who is not admitted to practice in this Court pursuant to Local Rule of Civil Procedure 83.1 shall not participate actively in the conduct of any trial or of any pre-trial or post-trial proceeding before this Court.

(b) An attorney who has appeared as attorney of record for a party may withdraw by permission of the Court for good cause shown, but withdrawal shall be effective only upon order of the Court entered after service of notice of withdrawal on all counsel of record and on the attorney's client, or upon stipulation endorsed by all counsel of record and signed by the Clerk in accordance with Local Rule of Civil Procedure 77.2. An attorney is not required to disclose to other counsel the reason(s) for withdrawal.

RULE 83.3

DISCIPLINE OF ATTORNEYS

(a) In addition to any other sanctions imposed in any particular case under these local rules, any person admitted to practice in this Court may be disbarred or otherwise disciplined, for cause, after hearing, and as the Court may direct. The Chief Judge of the District may appoint a Magistrate Judge or attorney(s) to investigate, advise or assist as to grievances or complaints from any source and as to applications by attorneys for relief from sanctions. Other than provided by subsection (b) of this rule, no censure, sanction, suspension or disbarment shall be applied without both notice and an opportunity to be heard and the approval of a majority of the Judges of the Court in active service, except that any Judge of this Court may for cause, revoke an admission pro hac vice previously granted by that Judge. Complaints or grievances, and any files based on them, shall be treated as confidential. Discipline shall be imposed only upon suitable order of the Court which shall or shall not be made available to the public, or published or circulated, as the Court shall determine in its discretion.

(b) Any attorney who has been disbarred from the bar of a state in which he or she was admitted to practice shall have his or her name stricken from the roll of attorneys of this Court or, if suspended from practice for a period at such bar, shall be suspended ipso facto for a like period from practice in this Court. An attorney once disbarred or suspended who seeks reinstatement to practice before this Court must reapply for admission in accordance with the provisions of Local Rule of Civil Procedure 83.1.

(c) The Code of Professional Responsibility of the American Bar Association as adopted by the New York State Bar Association shall be enforced in this Court.

(d) Nothing in this rule shall limit the Court's power to punish contempts.

RULE 83.4

CONTEMPTS

(a) A proceeding to adjudicate a person in civil contempt of court, including a case provided for in Federal Rules of Civil Procedure 37(b)(1) and 37(b)(2)(D), shall be commenced by the service of a notice of motion or order to show cause.

The affidavit upon which such notice of motion or order to show cause is based shall set forth with particularity the misconduct complained of, the claim, if any, for damages occasioned thereby, and such evidence as to the amount of damages as may be available to the moving party. Reasonable attorneys' fees necessitated by the contempt proceeding may be included as an item of damage. Where the alleged contemnor has appeared in the action by an attorney, the notice of motion or order to show cause and the papers upon which it is based may be served upon the attorney; otherwise, service shall be made personally, in the manner provided in Federal Rule of Civil Procedure 4 for the service of a summons. If an order to show cause is sought, such order may upon good cause shown embody a direction to the United States Marshal to arrest the alleged contemnor and hold him or her in bail in an amount fixed by the order, conditioned upon his or her appearance at the hearing and upon his or her holding himself or herself amenable thereafter to all orders of the Court for surrender.

(b) If the alleged contemnor puts in issue the alleged misconduct or the damages thereby occasioned, he or she shall upon demand be entitled to have oral evidence taken on the issues, either before the Court or before a master appointed by the Court. When by law the alleged contemnor is entitled to a trial by jury, he or she shall make a written demand therefor on or before the return day or adjourned day of the application; otherwise, he or she will be deemed to have waived a trial by jury.

(c) In the event the alleged contemnor is found to be in contempt of court, an order shall be made and entered (1) reciting or referring to the verdict or findings of fact upon which the adjudication is based; (2) setting forth the amount of the damages to which the complainant is entitled; (3) fixing the fine, if any, imposed by the Court, which fine shall include the damages found, and naming the person to whom such fine shall be payable; (4) stating any other conditions, the performance of which will operate to purge the contempt; and (5) directing the arrest of the contemnor by the United States Marshal, and his or her confinement until the performance of the condition fixed in the order and the payment of the fine, or until the contemnor be otherwise discharged pursuant to law. The order shall specify the place of confinement. No party shall be required to pay or to advance to the Marshal any expenses for the upkeep of the prisoner. Upon such an order, no person shall be detained in prison by reason of the non-payment of the fine for a period exceeding six months. A certified copy of the order committing the contemnor shall be sufficient warrant to the Marshal for the arrest and confinement. The aggrieved party shall also have the same remedies against the property of the contemnor as if the order awarding the fine were a final judgment.

(d) In the event the alleged contemnor shall be found not guilty of the charges made against him or her, he or she shall be discharged from the proceeding and, in the discretion of the Court, may have judgment against the complainant for his or her costs and disbursements and a reasonable counsel fee.

RULE 83.5

CAMERAS AND RECORDING DEVICES

(a) No one other than officials engaged in the conduct of court business and/or responsible for the security of the Court shall bring any camera, transmitter, receiver, portable telephone or recording device into the Court or its environs without written permission of a Judge of that Court.

Environs as used in this rule shall include the Clerk's office, all courtrooms, all chambers, grand jury rooms, petit jury rooms, jury assembly rooms, and the hallways outside such areas.

(b) The Chief Judge may waive any provision of this rule for ceremonial occasions and for non-judicial public hearings or gatherings.

RULE 83.6

STUDENT PRACTICE RULE

(a) A law student may, with the Court's approval, under supervision of an attorney, appear on behalf of any person, including the United States Attorney and the New York State Attorney General, who has consented in writing.

(b) The attorney who supervises a student shall:

(1) be a member of the bar of the United States District Court for the Western District of New York;

(2) assume personal professional responsibility for the student's work;

(3) assist the student to the extent necessary;

(4) appear with the student in all proceedings before the Court; and

(5) indicate in writing his or her consent to supervise the student.

(c) In order to be eligible to appear, the law student shall:

(1) be duly enrolled in a law school approved by the American Bar Association;

(2) have completed legal studies amounting to at least two semesters or the equivalent;

(3) be certified by a law school faculty member as qualified to provide the legal representation permitted by these rules. This certification may either be withdrawn by the certifier at any time by mailing a notice to the Clerk or be terminated by the Judge presiding in the case in which the student appears without notice, hearing, or cause. The termination of certification by action of a Judge shall not be considered a reflection on the character or ability of the student;

(4) be introduced to the Court by an attorney admitted to practice before this Court;

(5) neither ask for nor receive any compensation or remuneration of any kind for his or her services from the person on whose behalf he or she renders services, but this shall not prevent an attorney, legal aid bureau, law school, public defender agency, a state, or the United States from paying compensation to the eligible law student, nor shall it prevent any agency from making proper charges for his or her services;

(6) certify in writing that he or she is familiar with and will comply with the Code of Professional Responsibility of the American Bar Association as adopted by the New York State Bar Association; and

(7) certify in writing that he or she is familiar with the federal procedural and evidentiary rules relevant to the action in which he or she is appearing.

(d) The law student, supervised in accordance with these rules, may:

(1) appear as counsel in court or at other proceedings when written consent of the client (on the form available in the Clerk's office), or written consent of the United States Attorney when the client is the United States (or an officer or agency thereof) or of the Attorney General of New York when the client is the State of New York (or an officer or agency thereof) and the supervising attorney's name has been filed, and when the Court has approved the student's request to appear in the particular case to the extent that the Judge presiding at the hearing or trial permits; and

(2) prepare and sign motions, petitions, answers, briefs, and other documents in connection with the matter in which he or she has met the conditions of (d)(1) above; each such document shall also be signed by the supervising attorney.

(e) Forms for designating compliance with this rule shall be available in the Clerk's office. Completed forms shall be filed with the Clerk.

(f) Practice by students pursuant to this rule shall not be deemed to constitute the practice of law within the meaning of the rules for admission to the bar of any jurisdiction.

RULE 83.7

STUDENT LAW CLERKS

(a) A law student may, with the approval of a member of the law school faculty and of a Judge of this Court, serve as a part-time student law clerk to that Judge.

(b) In order to so serve, the law student shall:

(1) be duly enrolled in a law school approved by the American Bar Association;

(2) have completed legal studies amounting to at least two semesters or the equivalent;

(3) be enrolled in a law school course or program offering academic credit for serving as a part-time law clerk to a Judge or be certified by the dean of his or her law school for non-credit clinical experience;

(4) be supervised by a member of a law school faculty. This faculty adviser shall to the extent possible review all aspects of the student's work before it is submitted to the Judge;

(5) be certified by a faculty member of his or her law school as being of good character and competent legal ability. This certification may be withdrawn by the certifier at any time by mailing a notice to the Judge supervising the student. Termination of certification by the certifier shall not reflect on a student's character or ability unless otherwise specified. A copy of such certification and any withdrawal thereof shall be filed with the Clerk;

(6) neither be entitled to ask for nor receive compensation of any kind from the Court or anyone in connection with service as a part-time law clerk to a Judge;

(7) if required by the Judge, certify in writing that he or she will abstain from revealing any information and making any comments at any time, except to his or her faculty advisor or to court personnel as specifically permitted by the Judge to whom he or she is assigned, concerning any proceeding pending or impending in this Court while he or she is serving as a part-time law clerk. A copy of such certification shall be filed with the Clerk.

(c) A Judge supervising a part-time law clerk may terminate or limit the clerk's duties at any time without notice, hearing, or cause. Such termination or limitation shall not be considered a reflection on the character or ability of the part-time law clerk unless otherwise specified.

(d) An attorney in a pending proceeding may at any time request that a part-time law clerk not be permitted to work on or have access to information concerning that proceeding and, on a showing that such restriction is necessary, a Judge shall take appropriate steps to restrict the law clerk's contact with the proceeding.

(e) In accordance with the procedure set forth in parts (a) through (d) of this rule, an eligible law student may serve as a part-time student law clerk to a Bankruptcy Judge or to a full-time Magistrate Judge in the Western District of New York.

(f) For the purposes of Canons 3-A(4) and 3-A(6) of the Code of Judicial Conduct for United States Judges, a part-time law clerk is deemed to be a member of the Court's personnel.

(g) Forms designating compliance with this rule shall be available in the Clerk's office.

RULE 83.8

MODIFICATION OF RULES

Any of the foregoing rules shall, in special cases, be subject to such modification as may be necessary to meet emergencies or to avoid injustice or great hardship.

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